



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DEC 15 2005

Brian G. Svoboda, Esquire
Perkins Coie, LLP
607 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2011

Re: MUR 5637
21st Century Democrats and Michael Lux,
in his official capacity as treasurer
21st Century Democrats ("527 entity")
a/k/a Democrats 2000

Dear Mr. Svoboda:

On January 14, 2005, the Federal Election Commission notified your clients, 21st Century Democrats and Michael Lux, in his official capacity as treasurer, and 21st Century Democrats ("527 entity") of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaint were forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, the Commission, on November 17, 2005, found that there is reason to believe that 21st Century Democrats and Michael Lux, in his official capacity as treasurer, and 21st Century Democrats ("527 entity") a/k/a Democrats 2000 violated 2 U.S.C. §§ 434, 441a(f), and 441b(a); and 11 C.F.R. §§ 102.5, 104.10, and 106.6, provisions of the Act and Commission regulations. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information. Please note that respondents have an obligation to preserve all documents, records, and materials relating to the Commission's investigation.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in

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settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Order and Subpoena

Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: 21st Century Democrats and Michael Lux, MUR: 5637
in his official capacity as treasurer
21st Century Democrats ("527 entity") a/k/a Democrats 2000

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission ("Commission" or "FEC") by the Republican Party of Minnesota. See 2 U.S.C. § 437g(a)(1). The complaint alleges that 21st Century Democrats, which has both a federal account registered with the Commission and a nonfederal account registered with the Internal Revenue Service ("IRS") under section 527 of the Internal Revenue Code, may have used nonfederal donations from Matthew K. Entenza, Democratic-Farmer-Labor Party ("DFL") leader of the Minnesota House of Representatives, to pay for federal campaign activities during the 2004 election cycle.¹ One of the donations, made by check, was designated for 21st Century Democrats' Young Voter Project ("Voter Project"). The Voter Project was a voter mobilization drive targeting young voters in Minnesota, Nevada, Ohio, and Oregon.

In response to the complaint, 21st Century Democrats acknowledges conducting the Voter Project in the four states mentioned above but denies violating the Act. It asserts that it allocated its administrative and generic voter drive activities pursuant to 11 C.F.R. §§ 102.5(a) and 106.6, and that it financed the Voter Project's expenses in accord with those provisions.

As a political committee with federal and nonfederal accounts, as described in 11 C.F.R. § 102.5, 21st Century Democrats must comply with the contribution limitations, source

¹ References to 21st Century Democrats herein include both the federal and nonfederal accounts, unless otherwise specified. The DFL functions as the state committee of the Democratic Party in Minnesota.

prohibitions, and reporting requirements of the Federal Election Campaign Act of 1971, as amended, (the "Act").

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

21st Century Democrats was incorporated as a non-profit corporation in Washington, D.C. on July 14, 1988. The federal committee registered with the Commission on July 28, 1988 as a nonconnected committee under the name Democrats 2000.² The 527 organization also was originally registered with the IRS under the name Democrats 2000; the name there was changed to 21st Century Democrats from January 1, 2001 to December 31, 2003 and back to Democrats 2000 from January 1, 2004 to the present.³

21st Century Democrats' own characterization of the Voter Project shows that it was focused on identifying potential John Kerry voters in states widely regarded as keys to the Presidential election, registering them, and getting them to the polls, *see* Adam Ebbin, *21st Century Democrats Completes 100,000th Voter Contact*, August 30, 2004, *available at* <http://www.21stcenturydems.org/> (press release), although a proportion of their direct candidate support may have been for state and local candidates in the course of campaigns to elect Democratic legislative majorities in some states. *See* Patrick Sweeney, *Big PAC a player in state races; National Group backing DFLers for state House*, Saint Paul Pioneer Press (Minnesota),

² The committee's name was changed to 21st Century Democrats on March 5, 2001.

³ In its filing with the IRS, the 527 organization asserts that its purpose is "to elect progressive populist Democrats to office at all levels of government." IRS Form 8871 (Notice of Section 527 Status), August 1, 2000. 21st Century Democrats' website states that it was "founded to give progressive and populist candidates the support they need to win elections." <http://www.21stcenturydems.org/>. According to the website, the organization's "goal is to transform the Democratic Party by electing candidates who are committed to core progressive values" *Id.*

1 October 14, 2004, at A1. 21st Century Democrats' federal disclosure reports show \$465,970 in
2 allocated disbursements to payees in the four states in which the Voter Project was active that
3 appear to have been for the Voter Project. In addition, IRS Forms 8872 indicate that its 527
4 account spent \$152,143 in nonfederal funds on payroll and mileage for "field organizers" in at
5 least one of the key states where the Voter Project was conducted. The federal disbursements
6 were allocated on a 10 percent federal/90 percent nonfederal basis.

7 An article on 21st Century Democrats' website describes the Voter Project as "the most
8 intense independent campaign ever focused on increasing the Democratic youth vote." *The*
9 *Silver Lining of 2004: Effective Organizing Turns Out Democratic Young Voters*, available at
10 <http://www.21stcenturydems.org/>. The article also stated that the organization "talked to young
11 people where they live and work, identified potential Democratic voters, managed our data
12 rigorously, and followed up again and again to motivate and educate the young people we talked
13 to." *Id.* at 1. The article described the Voter Project thusly:

14 We created a Get Out The Vote (GOTV) program as intense and effect
15 [sic] as the programs traditionally focused on neighborhoods of reliable
16 Democratic voters. During the campaign, we contacted over 200,000
17 young people; we contacted each voter an average of five times, with three
18 contacts the week of the election providing specific information about how
19 and where to vote; we supplemented in-person and telephone contacts
20 with email messages, text messages, and automated calls; on 31 college
21 campuses, we recruited and supported student leaders who helped us break
22 new ground organizing door-to-door within dorms and residence halls;
23 and we pioneered a new street teaming approach called "Vote Mobbing" -
24 - organizers approached groups of young people wherever we could find
25 them, gathering candidate preference and personal contact information
26 while asking respondents to sign a pledge to vote.

27 *Id.* at 2.

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1 The article touted the success of the Voter Project, noting that "turnout skyrocketed in
2 our targeted precincts," and highlighted success in three states – Ohio, Oregon, and Minnesota.
3 *Id.* In particular, it was noted that in Ohio "Democratic turnout rose in our targeted precincts by
4 an average of 97% over the 2000 election" and that John Kerry won the precincts on the campus
5 of Ohio State University by 187% more votes than Al Gore did in the 2000 Presidential
6 elections. *Id.* The article further stated that in Minnesota "Democratic turnout in our 21
7 targeted precincts increased 80.7%, while Republican turnout increased by only 17%," and that
8 "Kerry won all five precincts by 2% to 14%" in St. Paul, where the organization "targeted five
9 'swing precincts' that split evenly between Bush and Gore in 2000." *Id.* Finally, the article
10 noted that "the youth vote has been called the 'silver lining' for Democrats this year. John
11 Kerry won voters under 30 years old by nine points, 54% to 45%, with greater margins in key
12 swing states. It's the only demographic group Democrats won." *Id.*

13 Although the Commission is not in possession of any printed materials, scripted
14 messages, written instructions, or other kinds of communications relating to the Voter Project, a
15 press release from 21st Century Democrats' website indicates that organizers and volunteers
16 focused on John Kerry. In the press release, Kelly Young, Executive Director of 21st Century
17 Democrats, reportedly stated that "over 50% of the young people we have spoken with are
18 strong Kerry supporters, and when combined with 'lean Kerry' young voters, two thirds of the
19 young people we have already spoken with are inclined to vote for progressive candidates."
20 Adam Ebbin, *21st Century Democrats Completes 100,000th Voter Contact*, August 30, 2004,
21 available at <http://www.21stcenturydems.org/>. The press release further specified that 21st
22 Century Democrats had targeted voters and voting precincts and that of the first 99,133 in-

1 person contacts, 51,368 (51%) told organizers they were strong Kerry supporters, 17,301 (17%)
2 were leaning towards Kerry and 15,251 (15%) were undecided. *Id.* This indicates that 21st
3 Century Democrats engaged in a large voter identification effort, and it may well have later
4 advocated Kerry's election to the individuals identified.

5 At the same time, other statements by Young and other leaders of 21st Century Democrats
6 leave little doubt that the organization engaged in efforts to elect John Kerry and defeat George
7 W. Bush. In a press release on 21st Century Democrats' website, Young reportedly made the
8 following statement: "Young voters will make the decisive difference in this year's election,
9 from winning back the White House to taking back control of state legislatures. I am impressed
10 by the dedication of hundreds of young volunteers - and the commitment of young voters - to
11 electing John Kerry and the Democratic ticket." Adam Ebbin, *New Campaign Offices open in*
12 *Minnesota, Ohio and Oregon*, August 17, 2004, available at <http://www.21stcenturydems.org/>
13 (emphasis added). Another press release reported that in December 2003 another 21st Century
14 Democrats' official, Jeannie Berg, newly-hired Oregon state director, planned to "recruit[]
15 thousands of activists to knock on doors, make phone calls and talk to voters about defeating
16 Bush in 2004." See Laila Hirschfeld, *21st Century Democrats Announce Hire of Oregon State*
17 *Director*, December 12, 2003, available at <http://www.21stcenturydems.org/> (emphasis added).

18 Schedules H4 filed by 21st Century Democrats covering August through November 2004
19 did not disclose any disbursements for "voter drive" costs. However, many of the
20 organization's reported administrative expenses may have been incurred in connection with the
21 Voter Project. In the three months before the November 2004 general election, the federal
22 committee disbursed a reported \$465,970 in allocated funds to payees in the four states in which

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1 the Voter Project was active. These payments were primarily for such things as payroll,
2 travel/mileage, office rent and office supplies. All these payments were allocated on a 10
3 percent federal/90 percent nonfederal basis. In addition, over the same time period the 527
4 account directly spent \$152,143 in nonfederal funds on payroll and mileage for payees located
5 in Minnesota (but not the other states).

6 At the same time, at least one media account indicates that 21st Century Democrats also
7 may have engaged in more than an insignificant amount of direct candidate support of
8 nonfederal candidates in at least one state, Minnesota. The article stated that 21st Century
9 Democrats was playing a "significant behind-the-scenes role" in "trying to help the Democratic-
10 Farmer-Labor Party win control of the state House," which it quoted the group's chairman of
11 the board -- a former mayor of St. Paul -- as characterizing as the organization's "primary goal"
12 in Minnesota. Patrick Sweeney, *supra*. Among the activities the committee reportedly
13 undertook in Minnesota was "paying the salaries of about 20 campaign workers helping DFL
14 candidates," *id.*, which may or may not have had something to do with the reported nonfederal
15 disbursements to payees in Minnesota. Nonetheless, as the chairman also acknowledged in the
16 article, "a high DFL voter turnout and DFL vote is going to affect . . . the congressional and the
17 Kerry campaigns." *Id.*

1 B. Analysis

2 21st Century Democrats had to comply with the then-applicable allocation requirements
3 set forth in 11 C.F.R. part 106. To the extent that 21st Century engaged in "generic" voter
4 mobilization activities that urged the general public to register, vote, or support candidates of a
5 particular party or associated with a particular issue, without mentioning a specific candidate,
6 those costs had to be allocated by using the then-applicable "funds expended" method, which is
7 the ratio of federal expenditures for direct candidate support to the total federal and nonfederal
8 disbursements for direct candidate support made by the committee during the two-year federal
9 election cycle. *See* 11 C.F.R. §§ 106.6(b)(2)(iii) and 106.6(c) (2004). For purposes of
10 determining the calculation of the appropriate ratio, Advisory Opinion 2003-37 ("ABC AO")
11 made clear that political committees with nonfederal accounts had to treat costs of
12 communications that promoted, supported, attacked or opposed ("PASO") a clearly identified
13 federal candidate as expenditures.⁴ Because it appears that 21st Century Democrats may have
14 treated such expenses as nonfederal disbursements, there is reason to believe it improperly
15 calculated its 90/10 nonfederal to federal allocation ratio.

16 Although a more than incidental proportion of 21st Century Democrats' expenditures for
17 direct candidate support may well have been for state and local candidates, the group's own
18 description of the Voter Project in press releases and other publicity materials -- which

⁴ The ABC AO interpreted the regulations that were in place at the time of the activity at issue in this matter. Subsequently, in January 2005, the Commission adopted more stringent allocation regulations and, in so doing, superseded the ABC AO. *See* Explanation and Justification for Regulations on Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees; Final Rules, 69 Fed. Reg. 68,056, 68,063 (November 23, 2004). The Commission is applying the regulations that were in effect at the time the activity in this matter occurred, rather than the subsequent, more stringent allocation requirements of the January 2005 regulations.

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1 emphasizes the election of Kerry and defeat of Bush -- make it appear likely that the 90%
2 nonfederal allocation ratio was too high. 21st Century Democrats' references to candidates Kerry
3 and Bush would not qualify as "generic" voter drives. The costs of voter mobilization messages
4 that promoted or supported Kerry's election, or that attacked or opposed Bush, and in which no
5 nonfederal candidate is clearly identified, should have been paid for with all federal dollars. *See*
6 11 C.F.R. § 106.1; *see also* ABC AO (applying section 106.1 to this kind of voter mobilization
7 activity). References to Bush or Kerry and the entire Democratic Party ticket would require that
8 part of the message be attributed to the clearly identified candidate, with the remaining "generic"
9 part of the message allocable between federal and nonfederal accounts.

10 In January 2003, at the beginning of the 2003-04 election cycle, 21st Century Democrats
11 estimated its "funds expended" ratio for the election cycle to be 75 percent nonfederal to 25
12 percent federal. Beginning in June 2004, it adjusted its ratio to 90 percent nonfederal to 10
13 percent federal. Given the Voter Project's apparent focus on the Presidential race, there is reason
14 to believe that 21st Century Democrats and Michael Lux, in his official capacity as treasurer,
15 understated the federal share of any allocable voter mobilization expenses, or used nonfederal
16 funds for communications that should have been paid for under section 106.1 with all federal
17 dollars.

18 C. Conclusion

19 The Commission finds reason to believe that 21st Century Democrats and Michael Lux, in
20 his official capacity as treasurer, and 21st Century Democrats ("527 entity") a/k/a Democrats
21 2000, violated 2 U.S.C. §§ 434, 441a(f), and 441b(a); and 11 C.F.R. §§ 102.5, 104.10, and 106.6,
22 by failing to properly allocate and report shared administrative and voter mobilization activities,

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- 1 and by using prohibited funds to pay for the federal share of those expenses, which may have
- 2 resulted in prohibited and excessive contributions.⁵

⁵ The IRS disclosure reports show that the nonfederal account accepted union and corporate contributions.

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